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U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUL 11 2013



-----X Docket#
UNITED STATES OF AMERICA, : 13-cr-72 (ADS) (AKT)
:
- versus - : U.S. Courthouse
: Central Islip, New York
JOHN DOE, :
Defendant : February 8, 2013
-----X

LONG ISLAND OFFICE

S E A L E D P R O C E E D I N G
TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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Proceedings recorded by electronic sound-recording,
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Proceedings

1 THE CLERK: Calling 13-cr-72, United States of
2 America v. John Doe.

3 Please state your appearances for the record.

4 MR. FLYNN: Good morning, your Honor.

5 Sean Flynn and Seth DuCharme and John Durham on
6 behalf of the United States.

7 MR. DURHAM: Good morning, your Honor.

8 MS. GAFFEY: Good morning, your Honor.

9 Tracey Gaffey and Randi Chavis on behalf of the
10 defendant.

11 THE COURT: Good morning, as well.

12 (Pause)

13 THE COURT: We have a number of matters to get
14 through this morning, so let me begin with the referral
15 from Judge Spatt.

16 Mr. Kaleebe (ph.), this matter has been
17 referred to me from Judge Spatt, the district judge
18 assigned to this case, to administer what's called the
19 allocution here under Criminal Rule 11 and to make
20 specific findings as to whether or not the plea that you
21 intend to enter here today is knowingly and voluntarily
22 made and to make a recommendation to Judge Spatt as to
23 whether the plea of guilty should be accepted.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: You have a right, an absolute
2 right, to have your plea entered before Judge Spatt.

3 Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: And notwithstanding that fact, I am
6 advised that you're agreeing to have your plea entered
7 here before me.

8 Is that correct?

9 THE DEFENDANT: That's correct.

10 THE COURT: And have you had an opportunity to
11 speak to your counsel about having your plea entered here
12 before me?

13 THE DEFENDANT: Yes.

14 THE COURT: And are you consenting to do so?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: All right. I have also been handed
17 up a waiver of indictment form and that form says that
18 you, Mr. Kaleebe, having been accused of attempting to
19 provide material support to terrorists in violation of
20 Title 18 of the United States Code Section 2339(a) and
21 attempting to provide material support to a foreign
22 terrorist organization in violation of Title 18 United
23 States Code Section 2339(b)(1)(A), that having been
24 advised of the nature of those charges, you are
25 nonetheless, having been informed of your rights, waiving

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1 here in open court today, you're waiving prosecution by
2 indictment and consenting that the proceeding may be here
3 by information rather than by indictment.

4 Is that correct?

5 THE DEFENDANT: That's correct.

6 THE COURT: And are you agreeing to that?

7 THE DEFENDANT: Yes.

8 THE COURT: And once again, have you had an
9 opportunity to speak with your counsel with regard to
10 this waiver of indictment?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Has anybody forced you or
13 threatened you in any way to get you to sign this waiver?

14 THE DEFENDANT: No.

15 THE COURT: And are you doing so freely and
16 voluntarily?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Based on the
19 information that I have received from Mr. Kaleebe, I am
20 signing the waiver of indictment form now, as well.

21 Mr. Flynn, I know that you have an application
22 here with regard to the record. I'm going to just hold
23 that over until we finish the plea, if that's agreeable.

24 MR. FLYNN: Yes, your Honor.

25 THE COURT: All right.

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1 I am going to ask my courtroom deputy now to
2 swear in the defendant and just to let you know,
3 Mr. Kaleebe, before accepting or making any
4 recommendation with regard to your plea, there are a
5 number of questions that I must ask you to insure that it
6 is a valid plea.

7 And if for some reason you don't understand any
8 of my questions, I'm going to ask you to please let me
9 know that in some way either through your counsel or by
10 raising your hand, and I'll attempt to reword the
11 question in a way that you can answer it. All right?

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Madam clerk, will you
15 please swear in the defendant.

16 **(DEFENDANT SWORN)**

17 THE COURT: Actually, a thought just occurred
18 to me, we might -- we have not arraigned him on the
19 information; correct?

20 MS. CHAVIS: (Indiscernible).

21 THE COURT: Do we need to arraign him first on
22 the information?

23 MR. FLYNN: Yes, your Honor.

24 THE COURT: All right. Let's take care of that
25 first.

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1 MS. CHAVIS: Your Honor, did we inquire at
2 (indiscernible) to change that plea of guilty f the
3 information.

4 THE COURT: Well, let me arraign him on the
5 information first and we'll take it from there, all
6 right?

7 Mr. Kaleebe, the purpose of this part of the
8 proceeding is to make sure that you understand what
9 crimes you're charged with, to make sure you understand
10 that you have a right to be represented by an attorney
11 and to address the question of whether you should be
12 released on bail or held in jail.

13 You are not required to make any statement here
14 and any statement that you do make, except to your
15 attorneys, can be used against you.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Mr. Kaleebe, have you had an
19 opportunity to see and review the information that's been
20 filed against you in this case?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: And do you understand that you have
23 been charged in Count I with attempt to provide material
24 support to terrorists. Specifically here, that in or
25 about and between August 1, 2011 and January 21, 2012

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7

1 (sic), here in the Eastern District of New York and
2 elsewhere, that you with others are charged with
3 knowingly and intentionally attempting to provide
4 material support and resources as defined in the statute
5 that applies here including currency, monetary
6 instruments, communications equipment, and personnel,
7 including yourself, knowing and intending that they were
8 to be used in preparation for and in carrying out a
9 conspiracy to commit at a place outside of the United
10 States, an act that would constitute the offense of
11 murder or maiming if committed in the special maritime
12 and territorial jurisdiction of the United States, where
13 one or more of the conspirators would commit an act
14 within the jurisdiction of the United States to affect an
15 object of the conspiracy in violation of Title 18 United
16 States Code Section 956(a).

17 Do you understand that that's what you're
18 charged with in Count I?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Count II is attempt to provide
21 material support to a foreign terrorist organization. In
22 that count, you're charged with on or about and between
23 August 1, 2011 and January 21, 2013, here in the Eastern
24 District of New York and elsewhere, along with others, of
25 knowingly and intentionally attempting to provide

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1 material support and resources as defined in the statute
2 noted here, including currency, monetary instruments,
3 communications equipment and personnel, including
4 yourself to a foreign terrorist organization and here
5 specifically, al-Qaeda, in the Arabian Peninsula, also
6 known as "Ansar al-Sharia".

7 Do you understand that that's the second charge
8 against you in the information?

9 THE DEFENDANT: Yes, I do.

10 MR. FLYNN: I apologize, your Honor. Just to
11 clarify for the record, with respect to Count I, when
12 your Honor was outlining those charges, you mentioned
13 August 1, 2011 to January 21, 2012 as the bookend of the
14 crime base. It's actually January 21, 2013.

15 THE COURT: All right. Thank you for bringing
16 that to my attention.

17 Do you understand that the dates we're talking
18 about in Count I here are between August 1, 2011 and
19 January 21, 2013? Is that correct, Mr. Kaleebe?

20 THE DEFENDANT: Yes.

21 THE COURT: All right.

22 Have you had an opportunity to discuss the
23 charges in the information with your counsel, Mr.
24 Kaleebe?

25 THE DEFENDANT: Yes, I have.

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1 THE COURT: And you know that you're being
2 represented by the attorneys from the Federal Defender's
3 Service here and in particular, Ms. Gaffey and Ms.
4 Chavis; correct?

5 THE DEFENDANT: Yes.

6 THE COURT: All right.

7 Ms. Gaffey, have you had an opportunity to
8 review the information with Mr. Kaleebe?

9 MS. GAFFEY: Yes, we have, your Honor.

10 THE COURT: And have you advised him of his
11 constitutional rights?

12 MS. GAFFEY: Yes, we have.

13 THE COURT: Is there any issue here with regard
14 to a preliminary hearing? I assume there is not.

15 MS. GAFFEY: No, your Honor.

16 THE COURT: All right. Then let's proceed with
17 the plea.

18 Mr. Kaleebe, you have already been sworn in as
19 you recall; correct?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Mr. Kaleebe, do you
22 understand that having been sworn now your answers to my
23 questions will be subject to the penalties of perjury or
24 of making a false statement if you do not answer them
25 truthfully?

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1 THE DEFENDANT: Yes, I do understand.

2 THE COURT: What is your full name, please?

3 THE DEFENDANT: Justin Robert Kaleebe.

4 THE COURT: And Mr. Kaleebe, how old are you?

5 THE DEFENDANT: 18-years-old.

6 THE COURT: What is the highest level of
7 schooling that you've completed?

8 THE DEFENDANT: I -- I was in twelfth grade at
9 the time of my arrest.

10 THE COURT: All right. Are you now or have you
11 recently been under the care of a physician or a
12 psychiatrist?

13 THE DEFENDANT: Yes, a physician.

14 THE COURT: And are currently taking any
15 medication as a result of being under the care of a
16 physician?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: And what medication are you taking?

19 THE DEFENDANT: I am taking a testosterone
20 supplement, AndroGel it's called.

21 THE COURT: Anything else?

22 THE DEFENDANT: No.

23 THE COURT: All right. Is there anything about
24 that medication that would impair your ability to appear
25 here today and give truthful answers to the questions

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1 that I am asking you?

2 THE DEFENDANT: No.

3 THE COURT: In the past 24 hours, have you
4 taken any narcotic drugs, medicine or pills aside from
5 what you've just described as the testosterone
6 medication, have you taken anything else or drunk any
7 alcoholic beverage in the last 24 hours?

8 THE DEFENDANT: No, I have not.

9 THE COURT: Have you ever been hospitalized or
10 treated for a narcotics addiction?

11 THE DEFENDANT: No.

12 THE COURT: Is your mind clear as you sit here
13 this afternoon?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand what is going
16 on in the courtroom?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Ms. Gaffey, have you discussed this
19 matter with Mr. Kaleebe?

20 MS. GAFFEY: Yes, we have.

21 THE COURT: And does he understand the rights
22 that he would be waiving here by pleading guilty?

23 MS. GAFFEY: Yes, he does.

24 THE COURT: To the best of your knowledge is
25 Mr. Kaleebe capable of understanding the nature of these

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1 proceedings?

2 MS. GAFFEY: Yes, he is.

3 THE COURT: And do you have any doubt, Ms.
4 Gaffey, as to Mr. Kaleebe's competency to plead at this
5 time?

6 MS. GAFFEY: No, I do not.

7 THE COURT: Mr. Kaleebe, you have the right to
8 plead not guilty.

9 Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: If you plead not guilty, under the
12 Constitution and laws of the United States, you are
13 entitled to a speedy and public trial by a jury with the
14 assistance of counsel on the charges.

15 Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: At the trial, you would be presumed
18 to be innocent and the government would have to overcome
19 that presumption and prove you guilty by competent
20 evidence and beyond a reasonable doubt. And you would
21 not have to prove that you are innocent. And if the
22 government failed, the jury would have the duty to find
23 you not guilty.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: In the course of the trial, the
2 witnesses for the government have to come to court and
3 testify in your presence. And your counsel has the right
4 to cross-examine the witnesses for the government, to
5 object to evidence that's offered by the government and
6 to offer evidence on your behalf. You also have the
7 right to compel witnesses to the trial.

8 Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: At the trial, while you would have
11 the right to testify if you chose to do so, you would not
12 be required to testify. Under the Constitution of the
13 United States, you cannot be compelled to incriminate
14 yourself. If you decided not to testify, the Court would
15 instruct the jury that they could not hold that against
16 you.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: If you plead guilty and if I
20 recommend to Judge Spatt that the plea be accepted, you
21 will be giving up your constitutional rights to a trial
22 and all the other rights that I have just discussed with
23 you. There will be no further trial of any kind and no
24 right to appeal or collaterally attack or at any time
25 question whether you are guilty or not. A judgment of

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1 guilty will be entered on the basis of your guilty plea
2 and that judgment can never be challenged. However, you
3 have the right to appeal with respect to the taking of
4 this plea and the sentence.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you plead guilty, I will have to
8 ask you questions about what did you did in order to
9 satisfy myself that you are guilty of the charges to
10 which you seek to plead guilty. And you will have to
11 answer my questions and acknowledge your guilt.
12 Therefore, you will be giving up your right not to
13 incriminate yourself.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Mr. Kaleebe, are you willing to
17 give up your right to a trial and the other rights that I
18 have just discussed with you?

19 THE DEFENDANT: Yes.

20 THE COURT: I have before me now the plea
21 agreement that you've entered into with the government
22 which we are marking as Court Exhibit 1.

23 You've seen the plea agreement, correct,
24 Mr. Kaleebe?

25 THE DEFENDANT: Yes, I have.

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1 THE COURT: And is this the agreement that
2 you've entered into now with the government regarding the
3 charges in this case?

4 THE DEFENDANT: Yes, it is.

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THE COURT: Mr. Flynn, I'm going to call upon

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1 you again now on behalf of the government if you would to
2 fill in the elements of the crimes charged here in the
3 information.

4 MR. FLYNN: Yes, your Honor. Count I of the
5 information, your Honor, charges attempt to provide
6 material support to terrorists, which is a violation of
7 Title 18 United States Code Section 2339(A)(a).

8 The essential elements of that crime are that
9 between August 1, 2011 and January 21, 2013, the
10 defendant knowingly and intentionally attempted to a
11 substantial (indiscernible) to provide material support
12 including either money, communications equipment or
13 himself, knowing and intending that those items were to
14 be used in preparation in support of the defendant
15 carrying out a conspiracy to commit at a place outside
16 the United States, an act that would constitute the
17 offense of either murder or maiming if it was committed
18 within the special maritime and territorial jurisdiction
19 of the United States and for one or more of the
20 conspirators would commit an act within the jurisdiction
21 of the United States to affect an object of the
22 conspiracy.

23 THE COURT: All right. Thank you.

24 Mr. Kaleebe, you've heard the prosecutor
25 outline the elements of the crimes with which you're

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1 charged.

2 MR. FLYNN: I'm sorry, your Honor, there's also
3 a second count.

4 THE COURT: So we've had Count I.

5 MR. FLYNN: Yes, your Honor.

6 THE COURT: Let me just ask him, do you
7 understand Count I?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: All right. Do you want to proceed
10 with Count II then, Mr. Flynn?

11 MR. FLYNN: Yes, your Honor. Count II of the
12 information charges the defendant with attempting to
13 provide material support to a foreign terrorist
14 organization in violation of Title 18 United States Code
15 Section 2339(b)(a)(1). The essential elements of that
16 crime charged in Count II is that during the same time
17 period, August 1, 2011 and January 21, 2013, the
18 defendant did knowingly and intentionally attempt or take
19 substantial steps to provide material support including
20 either money, communications equipment or himself to a
21 foreign terrorist organization; here, al-Qaeda in the
22 Arabian Peninsula, also known as "Ansar al-Sharia".

23 The government would also have to satisfy the
24 jurisdictional element; that being the defendant's either
25 a United States citizen, which he is, or that the events

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1 occurred in whole or in part in the United States. That
2 the defendant knew that the terrorist organization had
3 been designated as a foreign terrorist organization
4 (indiscernible), that the defendant knew -- or that the
5 defendant knew that the organization engaged in terrorist
6 activity or terrorism.

7 THE COURT: All right.

8 Mr. Kaleebe, you've now heard the prosecutor
9 outline the elements of the second count in the
10 information.

11 Do you understand those elements?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: All right. Have you had an
14 opportunity to discuss with your counsel, the charges --
15 the two charges that appear in the information?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand those
18 charges?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Looking at your plea agreement, and
21 I'm going to be referring to several of the items in that
22 agreement right now, Mr. Kaleebe, are you aware that
23 under the statute that applies here the maximum term of
24 imprisonment that Judge Spatt can impose with regard to
25 Count I in the information is a period of fifteen years.

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1 Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: And under the same statute, the
4 minimum term of imprisonment on Count I is zero years.

5 Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: With regard to again, this first
8 count, the maximum fine under the statute that can be
9 imposed here is \$250,000.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And that restitution here as
13 provided in the statute will be determined by the Court,
14 meaning Judge Spatt.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: There is also a \$100 special
18 assessment which is attached to this count, which is
19 primarily in the manner of an administrative fee that has
20 to be paid in the short term.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: With regard to Count I also, and
24 under the statute that applies here, Mr. Kaleebe, if
25 Judge Spatt imposes a period of incarceration, he must

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1 then impose a period of supervised release, as well.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Again, under the statute that
5 applies here, the maximum supervised release term here is
6 life, to follow any term of imprisonment.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: and if a condition of your release
10 is violated, you may be sentenced to up to two years
11 without credit for prerelease imprisonment or time
12 previously served on post-release supervision.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Moving to Count II, do you
16 understand that under Count II, the maximum term of
17 imprisonment that Judge Spatt can impose under the
18 statute here is fifteen years?

19 THE DEFENDANT: Yes.

20 THE COURT: And again, under the same statute,
21 the minimum term of imprisonment under Count II is zero
22 years.

23 Do you understand that?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: The maximum fine attached to Count

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1 II here is \$250,000.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And that once again here,
5 restitution under the statute will be determined by the
6 Court.

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: Here again, there is also a \$100
10 special assessment, again in the nature of an
11 administrative fee that must be paid in the short term.

12 Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And once again, if Judge Spatt
15 imposes a period of incarceration here, he then must also
16 impose a period of supervised release. Here, the maximum
17 supervised release term is life to follow any term of
18 imprisonment.

19 Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And do you further understand that
22 if a condition of that release is violated, you may be
23 sentenced to up to two years without credit for pre-
24 release imprisonment or time previously served on post-
25 release supervision?

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1 THE DEFENDANT: Yes, I understand.

2 THE COURT: All right. Do you also understand
3 that under the terms of the agreement the sentence
4 imposed on each count may run consecutively?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Now, Mr. Kaleebe, have
7 you had an opportunity to discuss the Federal Sentencing
8 Guidelines with your attorneys?

9 THE DEFENDANT: Yes.

10 THE COURT: Under a specific Supreme Court
11 decision the federal sentencing guidelines range is
12 advisory. It's been declared to be advisory and not
13 mandatory.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: In other words, Judge Spatt must
17 consider the federal sentencing guideline range but he is
18 not compelled to sentence you within that range.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: After considering the Federal
22 Sentencing Guidelines range, Judge Spatt must consider
23 all of the other factors in your case. For example, he
24 must consider the statutory reasons for sentencing and
25 those include the following:

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1 First of all, the nature and circumstances of
2 the offense and the history and characteristics of you as
3 the defendant.

4 He must also consider the need for the sentence
5 imposed to reflect the seriousness of the offense, to
6 promote respect for the law and to provide just
7 punishment for the offense.

8 He must also consider the need to afford
9 deterrence as to other criminal conduct and the need to
10 protect the public from further crimes that you might
11 commit.

12 Once Judge Spatt has done so, meaning once he
13 considered the Federal Sentencing Guideline range and all
14 of the other factors that I have just discussed with you,
15 his job then is to determine a sentence that is
16 reasonable, taking all of those factors into account.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Kaleebe, do you understand that
20 any estimate of the Federal Sentencing Guideline range
21 provided by the government is not binding on the Court
22 unless the Court says that it will be bound in that
23 fashion?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you realize importantly

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1 here, that if the sentence imposed by Judge Spatt is more
2 severe than you might have expected or anticipated, you
3 will nonetheless be bound by your guilty plea and you
4 will not be permitted to withdraw it?

5 Do you understand that?

6 THE DEFENDANT: Yes, I understand.

7 THE COURT: Mr. Kaleebe, do you have any
8 questions that you would like to ask me about the charges
9 here or your rights or anything else relating to this
10 matter?

11 THE DEFENDANT: No, I do not.

12 THE COURT: And are you ready to plead?

13 THE DEFENDANT: Yes, I am.

14 THE COURT: Ms. Gaffey, do you know of any
15 legal reason why Mr. Kaleebe should not plead guilty?

16 MS. GAFFEY: No, your Honor, I do not.

17 THE COURT: Mr. Kaleebe, are you satisfied with
18 your legal representation up to this point?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: And Mr. Kaleebe, what is your plea
21 to Count I of the information?

22 THE DEFENDANT: Guilty.

23 THE COURT: And what is your plea to Count II
24 of the information?

25 THE DEFENDANT: Guilty.

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1 THE COURT: Are you making these two pleas of
2 guilty voluntarily and of your own free will?

3 THE DEFENDANT: Yes, I am.

4 THE COURT: Has anybody threatened you or
5 forced you in any way to get you to plead guilty?

6 THE DEFENDANT: No.

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13 THE COURT: Has anyone made any promise to you
14 as to what your sentence will be?

15 THE DEFENDANT: No.

16 THE COURT: Mr. Kaleebe, did you as charged in
17 Counts I of the information, on or about and between
18 August 1, 2011 and January 21, 2013, here in the Eastern
19 District of New York and elsewhere, along with others,
20 did you knowingly and intentionally attempt to provide
21 material support and resources as defined in Title 18 of
22 United States Code Section 2339A(b), including currency,
23 monetary instruments, communications equipment and
24 personnel including yourself, knowing and intending that
25 they were to be used in preparation for and in carrying

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1 out a conspiracy to commit at a place outside of the
2 United States, an act that would constitute the offense
3 of murder or maiming if committed in the special maritime
4 and territorial jurisdiction of the United States where
5 one or more of the conspirators would commit an act
6 within the jurisdiction of the United States to affect an
7 object of the conspiracy contrary to Title 18 United
8 States Code Section 956(a)?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: And with regard to Count II, Mr.
11 Kaleebe, did you on or about and between August 1, 2011
12 and January 21, 2013, within the Eastern District of New
13 York and elsewhere, did you along with others, knowingly
14 and intentionally attempt to provide material support and
15 resources as defined in Title 18 of United States Code
16 Section 2339A(b) including currency, monetary
17 instruments, communications equipment and personnel
18 including yourself to a foreign terrorist organization,
19 to wit here specifically, al-Qaeda in the Arabian
20 Peninsula, also known as "Ansar Al Sharia"? Did you do
21 that?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Kaleebe, I am going to ask you
24 now please, if you would, to describe in your own words
25 what you did in connection with the acts charged in

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1 Counts I and II of the information.

2 THE DEFENDANT: In the fall of 2011, I decided
3 that I wanted to go overseas and join a group that was
4 engaged in fighting against foreign government officials,
5 U.S. troops or coalition forces. At meetings in Suffolk
6 County, Long Island, I and others discussed different
7 ways we could support such a group such as by providing
8 money, equipment and ourselves.

9 In the fall of 2012, I obtained a passport and
10 airline tickets and on January 21, 2013, I attempted to
11 board a flight to the Middle East at John F. Kennedy
12 Airport in an effort to reach in -- where I intended to
13 join the group Ansar Al Sharia, which is another name for
14 the foreign terrorist organization al-Qaeda in the
15 Arabian Peninsula.

16 When I was arrested, I was carrying with me an
17 iPad computer and some money which I was -- I planned on
18 and was willing to offer it to members of Ansar Al Sharia
19 to help their efforts.

20 THE COURT: All right.

21 MR. FLYNN: Your Honor, the government in
22 addition to the allocution that was just put on the
23 record, the government would additionally proffer that
24 al-Qaeda in the Arabian Peninsula was formally designated
25 as a foreign terrorist organization by the United States

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1 Department of State on January 19, 2010.

2 And subsequently, on October 4, 2012, Ansar Al
3 Sharia was tagged as (indiscernible) as a foreign
4 terrorist organization.

5 THE COURT: All right. That is so noted. I
6 need to just ask, Mr. Kaleebe, you concur, you agree with
7 that statement?

8 THE DEFENDANT: Yes.

9 THE COURT: All right.

10 THE COURT: Mr. Flynn, at this time, I am going
11 to call on you again please on behalf of the government
12 if you would, to outline the proof if this case were to
13 proceed to trial.

14 MR. FLYNN: Your Honor, if this case were to
15 proceed to trial, the government would call as witnesses,
16 of course (indiscernible) an undercover officer, who made
17 recordings over a substantial period of time of both
18 himself and others, including the defendant in this case.
19 On those recordings, the defendant can be heard in his
20 own voice planning -- expressing his desire and plans to
21 travel to the Middle East, specifically to Yemen, to
22 provide support and ultimately join in a foreign
23 terrorist organization, most notably al-Qaeda in the
24 Arabian Peninsula.

25 In addition to those, recordings, the testimony

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1 of the undercover officer, the government would also call
2 as witnesses other officers and law enforcement personnel
3 who would testify that on January 21st of this year,
4 2013, the defendant had in fact purchased a plane ticket
5 to the country of Yemen and was arrested when attempting
6 to board that plane on the jetway at John F. Kennedy
7 Airport.

8 Your Honor, just correct one point on the
9 record, the ticket was purchased to the nation of Oman
10 and again, the government would call witnesses and
11 officers who would testify and additionally, we would
12 provide undercover recordings that would show the
13 defendant's intent was to fly to Oman and cross the
14 border into Yemen.

15 THE COURT: All right. Thank you.

16 Based upon the information that's been provided
17 to me both by the government, by defendant's counsel and
18 by Mr. Kaleebe himself, in particular, I find that
19 Mr. Kaleebe is acting voluntarily, that he fully
20 understands his rights and the consequences of his plea
21 and that there is indeed a factual basis for the plea.

22 I am therefore recommending to Judge Spatt,
23 that the plea of guilty to Count I, as well as the plea
24 of guilty to Count II of the information here be
25 accepted.

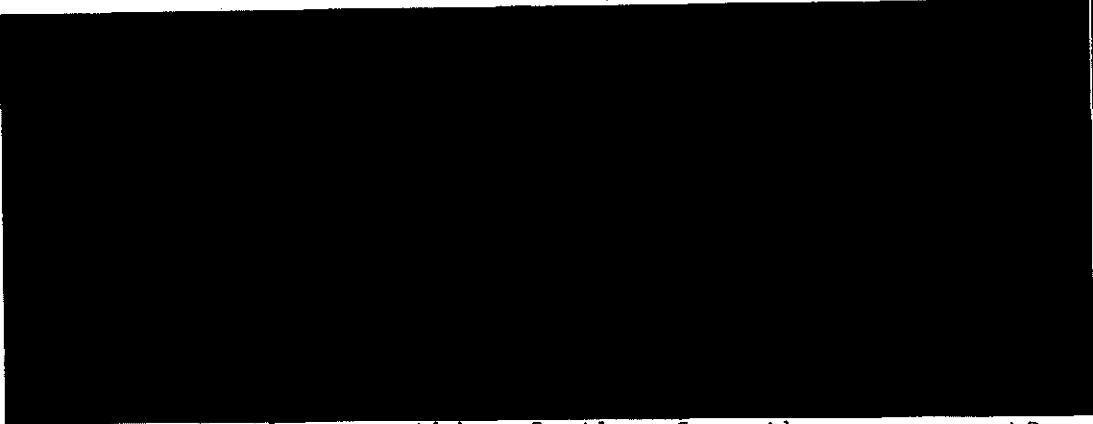
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Is there anything further from the government?

MR. FLYNN: No, your Honor, thank you.

THE COURT: Ms. Gaffey and Ms. Chavis, anything further on behalf of Mr. Kaleebe?

MS. GAFFEY: No, your Honor.

THE COURT: All right. These proceedings are concluded then.

I will tell you that this matter is set down for sentencing before Judge Spatt on May 10th at 2 p.m.

Good luck to you, Mr. Kaleebe

THE DEFENDANT: Thank you.

MR. FLYNN: Thank you, your Honor.

(Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 7th day of March, 2013.


Linda Ferrara

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